

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

JOSEPH WAYNE TICE,

Plaintiff,

vs.

DR. KOHUT,

Defendant.

CV 17-00058-H-BMM-JTJ

FINDINGS AND RECOMMENDATIONS
OF UNITED STATES MAGISTRATE
JUDGE

Pending is Defendant's Motion to Dismiss pursuant to Rule 41(b) of the Federal Rules of Civil Procedure and Local Rule 5.2 based upon Plaintiff Joseph Tice's failure to advise the Court of his change of address. (Doc. 15.) Mr. Tice did not respond. The motion should be granted and this matter dismissed.

Mail sent from the Clerk of Court's Office to Mr. Tice at his address of record (Montana State Prison) was returned as undeliverable on January 26, 2018 with the indication that Mr. Tice had been released. (Doc. 14.) The Local Rules for the District of Montana provide:

- (b) Dismissal Due to Failure to Notify. The court may dismiss a complaint without prejudice or strike an answer when:
 - (1) a document directed to the attorney or self-represented party by the court has been returned to the court as not deliverable; and
 - (2) the court fails to receive within 60 days of this return a

written communication from the attorney or self-represented party indicating a current address for service.

L.R. 5.2(b). It has been more than 60 days since the return of the Court's mail on January 26, 2018 and Mr. Tice has not provided the Court with written notice informing it of his change of address.

Therefore, IT IS HEREBY RECOMMENDED that Defendant's Motion to Dismiss (Doc. 15) be GRANTED and this action DISMISSED WITHOUT PREJUDICE pursuant to L.R. 5.2(b).

**NOTICE OF RIGHT TO OBJECT TO FINDINGS &
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT**

The parties may file objections to these Findings and Recommendations within fourteen (14) days after service (mailing) hereof.¹ 28 U.S.C. § 636. Failure to timely file written objections may bar a de novo determination by the district judge and/or waive the right to appeal.

This order is not immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Fed.R.App.P. 4(a), should not be filed

¹Rule 6(d) of the Federal Rules of Civil Procedure provides that "[w]hen a party may or must act within a specified time after being served and service is made under Rule 5(b)(2)(C) (mail) . . . 3 days are added after the period would otherwise expire under Rule 6(a)." Therefore, since Mr. Tice is being served by mail, he is entitled an additional three (3) days after the period would otherwise expire.

until entry of the District Court's final judgment.

DATED this 11th day of April, 2018.

/s/ John Johnston
John Johnston
United States Magistrate Judge